

ORIGINAL

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JUN 14 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the Cable Television  
Consumer Protection and Competition Act  
of 1992

MM Docket No. 92-259

Broadcast Signal Carriage Issues

**PETITION FOR RECONSIDERATION OF DENIAL OF  
YANKEE MICROWAVE, INC.'S REQUEST FOR STAY**

Yankee Microwave, Inc. ("Yankee"), by its attorneys and  
pursuant to Section 1.106 of the FCC's Rules, hereby petitions  
the Commission for reconsideration of its Order of May 26, 1993  
in MM Docket No. 92-259 (\_\_\_ FCC Rcd \_\_\_ (1993), FCC No. 93-278,  
released May 27, 1993). Therein, the Commission denied Yankee's

of which was given on May 13, 1993 (FCC No. 33112), and which was unopposed, Yankee argued that the new Rules, as drafted, would unfairly create an exemption from the retransmission consent requirements as to superstations delivered via satellite, but not for the same signals delivered by microwave or other distribution systems. Thus, an unintended impact of the Rule would be to unfairly discriminate in favor of satellite carriers over microwave or other signal delivery means and entities. In its stay request and associated "Petition for Emergency Reconsideration and Request for Modification of Rules of Yankee Microwave, Inc." (filed simultaneously therewith and incorporated therein by reference), Yankee stated that cable systems had already begun to notify Yankee of their intentions to switch modes of carriage if Yankee could not provide them with assurances they would receive relief from retransmission consent requirements. Yankee further noted that once a cable system invests in the equipment to receive satellite delivery of such superstations, it would be unlikely to return to microwave delivery.

In denying Yankee's request, the Commission stated that "the evidence provided by Yankee regarding the extent to which signals will be delivered by satellite instead of microwave is speculative, and it is unclear to whether cable systems will actually change the delivery system used to receive

[superstations]." Further, the Commission stated that the October 6, 1993 effective date would provide it with sufficient time to consider Yankee's petition alleging an unintended incidental and discriminatory impact of its Rules. The Commission then tersely concluded that Yankee had not demonstrated a stay was needed to avoid irreparable harm.

In requesting reconsideration, Yankee herewith submits letters, recently received from various cable companies, representing ten of the fourteen systems serving the states of Maine and New Hampshire that receive delivery of distant superstation WSBK from Yankee. (Thus, there is no must-carry option for any of Yankee's cable system customers.) One letter from A-R Cable Services, Inc. notifies Yankee that it is discontinuing carriage of the Yankee feed of WSBK for its systems in Mechanic Falls and Lewiston, Maine. Another A-R system serving Bangor, Maine, which recently discontinued receipt of Yankee's WSBK feed, has already begun receiving that same service via satellite. Another system serving St. Johnsbury, Vermont has orally informed Yankee that it will discontinue receipt of the Yankee feed for WSBK unless free retransmission consent can be provided for WSBK. Letters received from State Cable TV, Better Cable TV, and Casco Cable TV, memorialize their stated intention to switch carriage of superstation WSBK-TV from Yankee to a satellite feed, if no cost retransmission consent is not readily

conferred.<sup>2</sup> The reality of business planning dictates that decisions of this kind are not made on the eve of the effective date of a new Rule -- such must and will be made well in advance of October 6, 1993.

To date Yankee has received written or verbal notification of impending termination from twelve of the fourteen systems to which it provides microwave delivery of superstation WSBK. Loss of these customers will jeopardize the very existence of Yankee, a common carrier that has been serving some of these systems for more than twenty years. Thus, it is clear that the irreparable harm faced by Yankee is not speculative, but rather is quite real and imminent.<sup>3</sup> These developments further underscore the necessity of a stay pending action by the Commission on Yankee's Petition seeking modification of the discriminatory language of the "superstation exemption." ..

Yankee respectfully submits that the stay should be implemented by applying the superstation exemption to all

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<sup>2</sup> State Cable TV owns systems in Maine serving Augusta, Norway, Livermore, and Rumford, and systems in New Hampshire serving Conway and Littleton. State Cable has verbally informed Yankee that, although it is not memorialized within their letter, the New Hampshire systems would also be dropping the Yankee feed. Better Cable TV owns systems serving the Waterville, Maine area. Casco Cable TV owns a system in Brunswick, Maine.

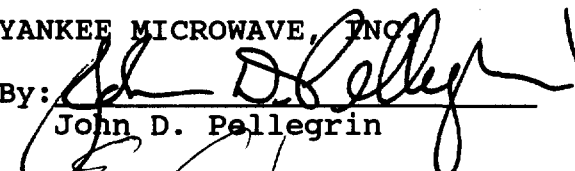
<sup>3</sup> Yankee is simultaneously supplementing its pending "Petition for Emergency Reconsideration and Request for Modification of Rules of Yankee Microwave, Inc." with the submission of this additional evidence of immediate harm.

superstation signals if those signals were superstations as of May 1, 1991, regardless of the current means of delivery of the signal. Such a rule would be consistent with legislative intent. In the alternative, the exemption should be stayed in its entirety to avoid unfair preferential treatment of satellite carriers.

WHEREFORE, for the foregoing reasons as well as those advanced in its initial stay request, Yankee Microwave, Inc. respectfully requests that the Commission grant its request for reconsideration and stay the effective date of the superstation exemption to its Retransmission Consent Rules pending consideration of Yankee's Petition For Reconsideration.

Respectfully submitted,

YANKEE MICROWAVE, INC.

By:   
John D. Pellegrin

By:   
Evan D. Carb

Its Attorneys

Law Offices of  
John D. Pellegrin, Chtd.  
1140 Connecticut Avenue, N.W.  
Suite 606  
Washington, D.C. 20554  
(202) 293-3831

Date: June 14, 1993

Declaration of Bernard Karlen

I Bernard Karlen, President of Yankee Microwave, Inc., under the penalty of perjury, do hereby declare that I have read the foregoing "Petition for Reconsideration of Denial of Yankee Microwave, Inc.'s Request for Stay" and that the facts set forth therein are true and correct to the best of my knowledge and belief.

Bernard E Karlen

Date: June 11, 1993

YANKEE MICROWAVE

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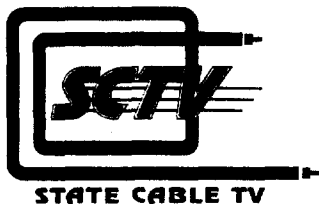
P.01

**A-R Cable Services, Inc.**  
One Media Crossways, Woodbury NY 11797  
(516) 364-8450

May 4, 1993

Yankee Microwave  
31 Ward Drive  
New Rochelle, New York 10804

Re: Lewiston. Maine System



June 2, 1993

Mr. Bernard K. Kalen  
31 Ward Drive  
New Rochelle, NY 10804

Dear Mr. Karlen:

Please be advised that unless our four small systems with approximately 25,000 subscribers receives Retransmission Consent from WSBK-TV, we will be forced to take the WSBK-TV signal from the Eastern Microwave satellite feed for which we require no Retransmission Consent.

Regretfully, the substitution of the satellite signal for the same signal now being delivered by Yankee Microwave will incur considerable addition expenses which we may be forced to pass along to our subscribers. We await your word concerning the relief.

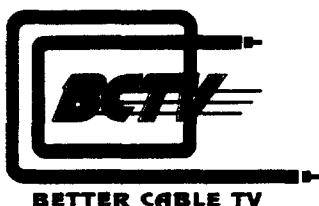
Sincerely,

A handwritten signature in dark ink, appearing to read 'Reginald Clark', is written over the typed name.

Reginald Clark  
General Manager

RC/cd





June 4, 1993

Mr. Bernard K. Karlen  
Yankee Microwave, Inc.  
31 Ward Drive  
New Rochelle, N.Y. 10804

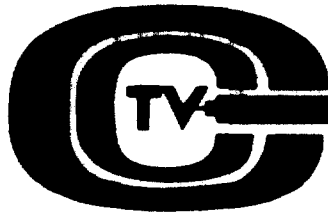
Dear Mr. Karlen:

We have more than 15,000 subscribers in our cable systems. Unless we receive Retransmission Consent from WSBK-TV we will be forced to drop the present WSBK-TV feed supplied by Yankee Microwave and replace it with the Eastern Microwave satellite feed which requires no Retransmission Consent. Unfortunately, doing this will incur considerable additional expense which we may have to pass on to our subscribers.

We await your word concerning the relief.

Very truly yours,

  
Donald Maheu  
Controller



## Casco Cable TV

Fort Andross  
14 Maine St., Suite 111  
Brunswick, Maine 04011

June 7, 1993

Mr. Bernard K. Karlen  
Yankee Microwave, Inc.  
31 Ward Drive  
New Rochelle, NY 10804

Dear Mr. Karlen:

We are a small system, in Maine with approximately 13,000 subscribers. Unless we receive retransmission consent from WSBK-TV, we will either be forced to take the WSBK-TV signal from the Eastern Microwave satellite feed for which is required no retransmission consent or to stop providing this popular channel to our customers.

Regretfully, the substitution of the satellite signal for the same signal now being delivered by Yankee microwave will increase our costs. These will eventually have to be passed along to our subscribers; a situation we obviously desire to avoid.

We await your word concerning the relief.

Sincerely,

Judy Hausmann  
General Manager  
Casco Cable Television

CERTIFICATE OF SERVICE

I, Kathy Nagl, a secretary in the law firm of John D. Pellegrin, Chartered do hereby certify that I have on this 14th day of June, 1993 transmitted a copy of the attached "Petition for Reconsideration of Denial of Yankee Microwave, Inc.'s Request for Stay" by hand to the following:

The Honorable James H Quello,  
Acting Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, DC 20554

The Honorable Andrew C. Barrett,  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, DC 20554

The Honorable Ervin S. Duggan,  
Commissioner  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, DC 20554

William H. Johnson,  
Deputy Chief  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 314  
Washington, DC 20554

Ronald Parver,  
Chief  
Cable Television Branch  
Federal Communications Commission  
1919 M Street, N.W.  
Room 242  
Washington, DC 20554

Marcia Glauberman  
Policy and Rules Division  
Federal Communications Commission  
1919 M Street, N.W.  
Room 8010  
Washington, DC 20554

  
Kathy Nagl